IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No. 423 of 2001.

Judgment reserved on 18.5.2007.

Date of decision 25th May, 2007.

Tulsi Ram ….**Petitioner.**

Versus

Union of India and others ….**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioner: **Mr. Ashutosh Burathoki, Advocate.**

For the Respondents: **Mr. Sandeep Sharma, Asstt. Solicitor General of India.**

Dev Darshan Sud, J.

This writ petition has been filed by the petitioner claiming disability pension. The petitioner is aggrieved by the order which has been passed by the respondents whereby his claim for grant of disability pension has been rejected vide order dated 28.8.1999 Annexure P-4, which states that the petitioner has been

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

informed many times in the past that his claim was rejected by the CCDA (P), Allahabad on the ground that the disability was neither attributable to nor aggravated by military service. The petitioner is aggrieved by this order and hence the present writ petition.

The service particulars of the petitioner and the nature of the disease afflicting the petitioner is not disputed before me. The proceedings of the Medical Board have been filed by the respondents as Annexure R-6. The medical certificate is categoric when it records under the column "The specific condition and period in service which aggravated the disability" that "Aggravated due to stress and strain of military service." In the other column immediately below this "Whether the effects of such aggravation still persist". The answer is "yes". The third column which records "If the answer (ii) is the affirmative, whether effect of aggravation will persist for a material period". Again the answer is "yes".

The petitioner has been diagnosed with "hemi parkinsonism" and the disability has been assessed at 30%. Annexure R-7 which is a communication dated

7.7.1995 rejecting the claim of the petitioner conveys to him that the disease from which he suffers is not attributable to military service. This is quite a strange observation having been made by the Accounts Officer (Pension), considering that the medical board considers the disease having been aggravated and persisted because of stress and strain of military service.

Learned counsel for the petitioner submits that the order of rejection Annexures P-4 and R-7 have been passed without application of mind and in a mechanical manner ride rough shod over the opinion of the medical board. No precedent is required to support this submission of the learned counsel for the petitioner. The documents and record are clear and unequivocal attributing the aggravation of the disease to military service and the percentage above the minimum of 20% required for grant of military pension. This Court, in CWP 742 of 2003 and other connected matters, by its judgment dated 9.1.2007 has already held that primacy has to be given to the report of the medical board, unless it can be shown that the report itself cannot be sustained for compelling reasons. I

find from the records of the case that the onset of the disease from which the petitioner was suffering and was invalidated out of the Army, was after the joining of military service and was aggravated because of the stress and strain of the military service. The disability has been assessed at 30%.

In the circumstances, this writ petition is allowed. Annexures P-4 and R-7 are quashed and set aside and a direction issued to the respondents to grant disability pension to the petitioner in accordance with law within a period of eight weeks from today. There shall be no order as to costs.

May 25th, 2007(PC). (Dev Darshan Sud), J.